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NTSB Order No. EA-3582

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 22nd day of May, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

SE-12453

v.

ROBERT EDWARD OLSEN,

Respondent.

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on March 31, 1992, following an evidentiary hearing.¹ By that decision, the law judge affirmed the emergency order of the Administrator revoking respondent's airframe and powerplant mechanic certificate. We deny the appeal.

Respondent was charged with violations of Federal Aviation Regulations § § 43.51(a),² 43.5(b), 43.12(a)(1), and 43.13(a) and

¹The initial decision, an excerpt from the hearing transcript, is attached.

²There is no § 43.51(a). It is clear from paragraph (c) of the order of revocation, however, that this reference was intended to be § 43.5(a), reproduced in footnote 3, infra. Respondent did

(b) ("FAR," 14 C.F.R. Part 43).³ The complaint alleged

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not challenge the citation at any time, and there is no indication that this typographical error compromised his ability to respond to the charges. We will, therefore, treat the matter as harmless error.

³§ 43.5 (a) and (b) read:

§ 43.5 Approval for return to service after maintenance, preventive maintenance, rebuilding or alteration.

No person may approve for return to service any aircraft, airframe, aircraft engine, propeller, or appliance, that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless -

(a) The maintenance record entry required by § 43.9 or § 43.11, as appropriate, has been made;

(b) The repair or alteration form authorized by or furnished by the Administrator has been executed in a manner prescribed by the Administrator[.]

§ 43.12(a)(1) reads:

§ 43.12 Maintenance records: Falsification, reproduction, or alteration.

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part[.]

§43.13(a) and (b) read:

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with

inadequate maintenance and recordkeeping in connection with a Bellanca Citabria N222RK. The complaint was prompted by an inquiry from Mr. Gerald Crowe (who, after he purchased the aircraft, discovered various mechanical irregularities).

Mr. Crowe testified that the Citabria was to have had a new annual inspection prior to purchase. He had been advised by Mr. Bearden, a mechanic he consulted, that the aircraft appeared sound but its logbook contained no current annual inspection. Respondent assured Mr. Crowe that an inspection had been done. Thus, on August 16, 1991, Mr. Crowe brought respondent the logbook so the latter could make the necessary entry. In Mr. Crowe's presence, respondent made a log entry showing an annual inspection, and back-dated the entry to August 9, 1991. Respondent also entered a tachometer reading of "2402." at that time.

Mr. Crowe testified that, after purchase, he flew the aircraft for 2.83 hours, at which point he delivered it to Mr. Bearden for further check-out. Mr. Bearden identified numerous

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accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

defects, which he testified were not observable during his initial check.⁴

Two FAA safety inspectors testified for the Administrator regarding the condition of the aircraft when they saw it on August 26 and 27, 1991. See Exhibit 2 and 4 statements. Both concluded that the aircraft was not airworthy due to numerous discrepancies, including missing parts (oil seal, alternator bolt, crankcase nut), a cracked muffler, and worn carburetor air box bushings. In addition, one testified to the failure of certain parts to conform to service manual requirements, and the documentation required (Form 337) for major repairs. Transcript at 106-7.

Soon after, these inspectors met with respondent, who is alleged to have told them (see Exhibit 3) that the annual inspection actually was performed in November 1990. According to these witnesses, at the meeting respondent did not mention an August inspection, nor did he have an explanation for why he had not logged the 1990 inspection or why he lacked documentation for the major repairs to the aircraft (replacement of a rebuilt wing

⁴Respondent attempted to discredit this testimony with contradictory testimony that Mr. Crowe's pre-purchase inspection was more elaborate than Mr. Crowe had admitted and would have allowed discovery of certain of the discrepancies. There was also testimony that the aircraft was sold "as is." Tr. at 206-208. This testimony is not relevant to any of the charges. To the extent it is relevant to credibility determinations, those matters are left to the law judge absent a showing that the findings are arbitrary or capricious. Respondent has not so argued.

and partial tail assembly).⁵

Excerpts from the aircraft and engine logs (see Exhibit 6) indicated that the engine was overhauled and other work done on November 12, 1990. Respondent's entries in the engine and aircraft logs for that date included tachometer readings of "2402:00" and "2402". At the time of the FAA's inspection on August 27th, the tachometer read 2406.25.⁶ The FAA witnesses agreed that the items identified as unairworthy could not have become so in approximately 4 hours flying time, thus disputing that respondent had performed an inspection in either August 1991 or November 1990.

Respondent testified both that the November work was equivalent to an inspection and he was not sure why he did not so log it (Tr. at 178-180) and that the November work was not an annual inspection (Tr. at 190).⁷ He stated categorically, however, that he had performed a full inspection 1-1 1/2 weeks before Mr. Crowe brought him the logbooks for the entry. Id. at 160. He thought the date of the inspection was "probably" August 9th, but was unable to record the inspection on the date it was performed because the logbooks were inaccessible that day. Id.

⁵The aircraft had been in an accident prior to respondent's purchase of it.

⁶See Exhibit 5a photograph of instrument panel.

⁷The significance of this contradictory testimony is not entirely clear. In the latter statement, respondent may simply have been acknowledging that the November work had not been logged as an inspection and, therefore, he did another.

at 162.

In response to questions about the method of inspection, respondent acknowledged that it was not performed at his facility in Oceanside, but on a ramp at another airport. Respondent introduced the testimony of a witness who saw him there "no more than a week" before the aircraft was removed by Mr. Crowe (which occurred approximately August 16-17). Id. at 217. This witness stated that respondent was performing an annual inspection on the aircraft later sold to Mr. Crowe. Id. at 217-224.⁸

Respondent admitted not bringing manuals or a check sheet with him, but denied that this affected the quality of the inspection. Id. at 191-2. He could not explain how the aircraft had gotten in the condition it was in at the time of the FAA inspection. He suggested that some items could have broken during the August 9-27 period, and intimated that others had been deliberately altered.⁹ In this same vein, respondent noted that, after he completed the November work, the aircraft was flown from respondent's facility first to one location and then to another (where it was sold to Mr. Crowe in August).

⁸However, the witness was not a certified mechanic, and she also testified that the aircraft was white and gold/yellow, when it was red. Id. at 219, 224.

⁹In testifying that a nut had been purposely removed (id. at 168), respondent was suggesting that the blame lay elsewhere. Mr. Crowe was asked whether he had performed acrobatics in the aircraft after purchase (which might have damaged the aircraft). He denied having done so, noting that no parachutes were on board. Id. at 150. One of respondent's witnesses testified Crowe told him that he could do his own maintenance (id. at 226), thus suggesting that, after his purchase, he had altered respondent's work.

Respondent contended that he had little if any connection or control over it during this time. Respondent could not, however, explain why his log included a tachometer reading of 2402 both before and after these two flights. Tr. at 184. He offered 10 letter-exhibits containing testimonials to his expert repair and maintenance.

The law judge affirmed most of the charges. He did so, however, without regard to the issue of whether or when an annual inspection had been conducted. The § 43.51(a) [sic] violation was founded on respondent's admission that, at his direction, the aircraft was flown between November and August, yet no log entry reflected the aircraft's return to service. The law judge further found that § 43.13(a) had been violated. He concluded that, assuming respondent performed an annual inspection, he failed to use a checklist.¹⁰

Finally, the law judge found (citing Hart v. McLucas, 535 F.2d 516 (9th Cir. 1976)) that the Administrator had proven the three elements needed to establish a violation of § 43.12(a)(1). He concluded that respondent had made an intentionally false and material statement in his tachometer entry dated August 9th.¹¹ Because respondent knew at that time that the aircraft had been flown after November 1990, the law judge found not only that the

¹⁰The law judge continued this discussion by finding that a particular defect produced an unairworthy condition.

¹¹ Under Hart, elements necessary to prove an intentionally false statement are: 1) a false representation; 2) in reference to a material fact; and 3) made with knowledge of its falsity.

entry was false, but that respondent knew that the same tachometer entry in August was false.¹²

On appeal, respondent challenges only the law judge's § 43.12(1)(a) finding of an intentionally false log entry. For the reasons discussed below, we find his arguments meritless and affirm the initial decision.

Respondent criticizes the law judge's findings on each of the three Hart criteria. He claims that the findings that the tachometer log was false and that respondent was aware it was false are not supported by substantial evidence. He contends that, even were these aspects of the required findings proven, the falsification was not material, and therefore no violation may be found.

As to the first finding that the log entry was false, respondent contends that the entry was not false but was incomplete. Allegedly, a decimal point in the August 9th entry -- "2402." -- indicates respondent's failure to complete the entire entry because at the time the aircraft was elsewhere and he could not get an exact reading. Respondent distinguishes between an incomplete entry and a false one.

As the Administrator notes in reply, however, respondent's argument in support of this contention is new, and was not presented to the law judge. As such, and with no explanation offered or good cause found, it may not be considered. And, even

¹²The law judge declined to find violations of §§ 43.13(b) and 43.5(b). The Administrator has not appealed these conclusions.

if it were, it is without merit as it does not address the central question: was the entry accurate? The fact remains that, even under respondent's theory, the entry was inaccurate.¹³

As to actual knowledge, the third element of the Hart test, respondent does not directly challenge the law judge's finding. Instead, he argues that he had nothing to gain from falsifying the tachometer. Purpose, however, is irrelevant to our inquiry; we are aware of no case that excuses a violation because no rational purpose for it was identified, and we are not sanguine about the effects such a policy would have on aviation safety. Respondent's false entry shows an unacceptable indifference to the need for accuracy in aircraft records.¹⁴

¹³See Administrator v. Rice, 5 NTSB 2285 (1987) (while an inspection entry need not be logged on the day it is completed, when the entry is made it must show the exact completion date). The same would be true of other data entered in the log. Logs are to reflect correct, accurate information.

Respondent's further discussion about the law judge's tachometer calculations is also beside the point. The regulation allows for no departure, however de minimis, from actual data.

¹⁴The proper maintenance of logbooks is essential to the proper maintenance and safe operation of aircraft. Clarence A. Conroy, Airman Certif., 5 CAB 172, 179 (1941). The law judge here suggested that respondent was driven by his personal interest in the aircraft. Tr. at 246. In Rice, supra at 2291-2, respondent was also attempting to sell his aircraft. We said:

An Inspection Authorization holder who knowingly misrepresents a logbook entry bearing on the condition of an aircraft he owns for purposes of enhancing its salability reveals a willingness to place personal gain ahead of professional responsibility that is incompatible with the position of public trust he occupies. Such an individual clearly lacks the judgment a qualified certificate holder is expected and required to possess.

Finally, as to the last element of Hart, respondent claims that the tachometer entry was immaterial. Administrator v. Cassis, 4 NTSB 555 (1982), reconsideration denied, 4 NTSB 562 (1983), aff'd Cassis v. Helms, Admr., FAA, et al, 737 F.2d 545 (6th Cir. 1984), set forth the applicable law (which differs from respondent's characterization). The issue is not whether the false statement would or could influence a "significant" decision. In Cassis, which involved falsely increased flight time entries, we stated:

Our determination . . . is reinforced by the need, when determining materiality in a case such as this, to look at the intentionally false entry in the logbook as it relates to the certification framework generally, not just in connection with the application which gave rise to the alleged violation. Viewed in this broader light, any logbook entry which in any way illustrates compliance with any certification or rating requirement in 14 CFR 61 is material for purposes of a Section 61.59(a)(2) violation. The maintenance of the integrity of the system of qualification for airman certification, which is vital to aviation safety and the public interest, depends directly on the cooperation of the participants and on the reliability and accuracy of the records and documents maintained and presented to demonstrate compliance.

Id. at 557. For obvious reasons, the identical sentiments apply to falsifications in aircraft logs. And again, respondent's unsupported argument -- that any falsification here has a de minimis effect -- is, for fundamental aviation safety reasons, unavailing.¹⁵

Respondent concludes by arguing that revocation is too severe a sanction in this case and that a 30-day suspension would

¹⁵As the Administrator notes in reply (at 15), tachometer readings serve important purposes.

be appropriate. The cited cases, however, fail to support a sanction reduction here. Indeed, the sanction is consistent with precedent, as Essery v. Department of Transportation, et al, 857 F.2d 1286 (9th Cir. 1988) requires.¹⁶ As the law judge found, one intentionally false log entry would be sufficient, in and of itself, to warrant revocation. Administrator v. Rea, NTSB Order EA-3467 (1991); Cassis, supra; Rice, supra. Accord 14 C.F.R. 43.12(b). Respondent also ignores that in this case the falsification violation is in addition to violations of § § 43.5(a) and 43.13(a) (findings he did not appeal).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision and the Administrator's emergency order of revocation are affirmed.

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

¹⁶As the Administrator also points out, respondent cites Hart out of context in claiming it requires that the degree of culpability should be considered in assessing the sanction. In any case, respondent does not offer any discussion of how he would apply such a standard here.